



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of D.C., Fire Fighter
(M2537M), Hoboken

CSC Docket No. 2014-167

Medical Review Panel Appeal

ISSUED: JUL 31 2014 (BS)

D.C., represented by Michael Prigoff, Esq., appeals his rejection as a Fire Fighter candidate by Hoboken and its request to remove his name from the eligible list for Fire Fighter (M2537M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on May 22, 2014, which rendered the attached report and recommendation on May 25, 2014. No exceptions were filed by the parties.

The report by the Medical Review Panel discusses all submitted evaluations. The test results and procedures and the behavioral record, when viewed in light of the Job Specification for Fire Fighter indicate that the applicant is psychologically fit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should not be upheld. Accordingly, the Panel recommended that the candidate be restored to the eligible list.

CONCLUSION

Having considered the record and the Medical Review Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's Report and Recommendation.

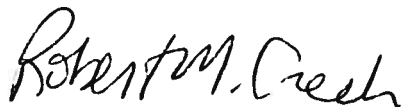
ORDER

The Civil Service Commission finds that the appointing authority has not met its burden of proof that D.C. is psychologically unfit to perform effectively the duties of a Fire Fighter and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated. A federal law, the Americans With Disabilities Act (ADA), 42 U.S.C.A. §12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also* the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (October 10, 1995). That offer having been made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
Correspondence:

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Attachment

c: D.C.
Michael Prigoff, Esq.
Kimberly M. Wilson, Esq.
Kenneth Connolly

TO: State of New Jersey, Department of Personnel
Merit System Practices & Labor Relations

FROM: Medical Review Panel
(Evan Feibusch, M.D., Joel Friedman, Ph.D.)

RE: [REDACTED]

DATE: 5/22/2014

Identifying Information:

Mr. [REDACTED] is a 34-year-old applicant to the City of Hoboken Fire Department for the position of Fire Fighter. His name was removed from the eligibility list of the hiring authority for the reason of being psychologically unfit for the position. The applicant was interviewed by Betty McLendon, Psy.D. on behalf of the hiring authority, and by Sandra Morrow, Ph.D. on behalf of the applicant. Dr. McLendon was present on behalf of the hiring authority along with Alysia Proko. Mr. [REDACTED] was present, along with his attorney, Michael Prigoff, Esq.

Documents Reviewed:

- Psychological Evaluation, Betty McLendon, Psy.D., 12/17/2012
- Untitled/ Undated Questionnaire from Comprehensive Psychological Services, Personal Problems Checklist for Adults, Shipley-2 Autoscore Form, House – Tree – Person Drawings, CPS Biography, Symptom Checklist-90-R, Inwald Personality Inventory – 2 (IPI) Narrative Report and Critical Item Follow Up, Curtis Completion Form, Firefighter Candidate Questionnaire, Firefighter Candidate Inventory, Firefighter Situational Questionnaire, Psychological/ Social History
- New Jersey Motor Vehicle Commission Driver History Abstract, 10/4/2012
- Psychological Evaluation, Sandra Morrow, Ph.D., 10/27/2013
- Millon Clinical Multiaxial Inventory-III (MCMI) Profile Report, 9/4/2013
- Strong Interest Inventory Profile, 9/26/2013
- Letter to the Civil Service Commission, Michael Prigoff, 1/9/2014
- Final Order of Expungement, 4/27/2011

Findings of Previous Examiners:

Dr. McLendon conducted a psychological evaluation that included a clinical interview and the tests and questionnaires noted above. Dr. McLendon opined that Mr. [REDACTED] “had had significant issues adhering to standards, containing impulses and exercising sound judgment.” She based her opinion on her review of “clinical findings and background data.” She cited what she described as him not being able to “achieve at a level commensurate with his overall abilities” as measured by his overall IQ (average range). He was not successful in college, having been placed on academic probation and transferring after a semester. Dr. McLendon noted that in the eleven years following his leaving school, he had not pursued additional training or other responsibilities that would indicate an interest in public service. She cited “numerous low skilled jobs” and a lack of employment stability.

Dr. McLendon made note of Mr. [REDACTED]’s conviction related to possession of “ecstasy” with intent to distribute when he was 20 years old. She viewed him as not taking responsibility for his behavior, viewing his friends as the reason for the offense. She also had concerns about his drinking and motor vehicle history.

Dr. McLendon also was concerned about her interpretation of the applicant's responses on House-Tree-Person drawings that she saw as reflective of "an aggressive and hostile outlook." She also took note of his responses on sentence completion testing that she saw as reflecting a lack of insight. She cited an elevation on the Volatility scale of the IPI as an additional area of concern.

Overall, Dr. McLendon's conclusion was that Mr. [REDACTED] had "demonstrated a pattern of adjustment difficulties characterized by poor impulse control, disregard for standards and lapses in social reasoning." She opined that he was psychologically unfit to serve as a firefighter.

Dr. Morrow evaluated Mr. [REDACTED], reviewed the materials provided by Dr. McLendon, and administered the psychological tests described above. Regarding his personal history, Dr. Morrow noted that the applicant did not become fully fluent in English until the second grade, which could explain some of his early academic issues. She described him as being more interested in working on "motors" rather than academic pursuits, but that he went to college in order to satisfy his parent's wishes. Dr. Morrow described Mr. [REDACTED]'s participation in charity events and caring for his ill grandfather as evidence of community service. Regarding Mr. [REDACTED]'s arrest and conviction, she described him as displaying "shame and remorse" at the events.

The MCMI did not reveal antisocial tendencies. The testing was defensive, but valid. Testing was consistent with a histrionic personality with elevations on the narcissistic and compulsive scales. The Strong Interest Inventory and Myers-Briggs Type indicator were interpreted as comparing favorably to other firefighters.

Dr. Morrow viewed the applicant as presenting "more assets than liabilities." In giving her opinion, she acknowledged his history of the conviction related to CDS and motor vehicle issues. She opined that Mr. [REDACTED] was psychologically fit for the position.

Mr. [REDACTED]'s Appearance Before the Panel:

Mr. [REDACTED] presented as an appropriately dressed man who appeared to be about his stated age. His behavior during the MRP was unremarkable in that he did not show signs of overt psychopathology such as psychosis or thought disorder. He answered the questions of the MRP in a cooperative manner.

Mr. [REDACTED] told the panel that he had had changed jobs again in the last nine months due to his place of employment having closed. He described his job changes as having been due to the nature of his employment as a bartender. He said that he had never been terminated, disciplined, or had conflicts in the workplace.

Regarding his motor vehicle issues, he described his license suspension as having been related to the CDS conviction. His last moving violation had occurred five years ago and at the time of the panel he had no points on his license.

The conviction at age 20 was described by him as being due to "bad judgment." He had not been arrested nor had he had any negative contact with police authorities since that time. He did not endorse any problematic drinking behavior and denied any use of illegal drugs other than having used marijuana in high school.

Conclusion:

The evaluators on behalf of the applicant and the hiring authority reached differing conclusions and recommendations. Dr. McLendon cited Mr. [REDACTED]'s lack of achievement commensurate with his ability, responses on open ended sentence completion testing, lack of motivation to pursue a community service, CDS related conviction, responses to projective psychological tests, and a subscale of the IPI, as her reasons for finding him unfit. Dr. Morrow did not see Mr. [REDACTED]'s history as being indicative of a lack of fitness for the position, nor did she find his results on the testing she administered as being evidence of him being unfit.

The MRP took note of Mr. [REDACTED]'s arrest and did not disagree with Dr. McLendon's opinion in the MRP review that this reflected "social immaturity," however, the arrest had occurred in 2000 and there was a lack of evidence of further such incidents in the interim 13 or so years. This was deemed by the panel to be evidence of a lack of pattern of antisocial behavior. Although Mr. [REDACTED] had not succeeded in college, we saw this as consistent with his stated interest in mechanical things, rather than more academic pursuits. His frequent changes in employment were seen as consistent with the nature of his job, rather than reflective of work related problems.

Regarding the testing, we were not particularly concerned with an elevation on one subscale of the IPI in light of the lack of behavioral evidence of volatility. The rest of the IPI was unremarkable. The interpretation of projective testing likewise did not raise substantial concerns for the panel.

Taking into consideration Dr. McLendon's and Dr. Morrow's evaluations, Mr. [REDACTED]'s presentation, the psychological test results, and the behavioral record when viewed in light of the job specifications for Fire Fighter, it indicates that the applicant is fit to perform effectively the duties of the position, and therefore, the action of the hiring authority should not be upheld.

Recommendation:

It is the recommendation of the Panel that the candidate, Mr. [REDACTED] be reinstated to the candidate eligibility list.

Evan L. Feibusch, M.D.

Evan L. Feibusch, M.D.
Diplomate of the American Board of
Psychiatry with Certification in the
Subspecialty of Forensic Psychiatry

5/25/2014

Date